

**DECLARATION OF KATHRYN WALKER**

I, Kathryn Walker, declare and state as follows:

1. My name is Kathryn Walker. I am employed by PepsiCo, Inc. (“PepsiCo”) and I am the Vice President of Commercial Planning for Energy, a division within PepsiCo charged with overseeing the merchandising and sales of energy beverages. I live in Rockville Centre, New York, and work in White Plains, New York, am over the age of twenty-one, have never been convicted of a crime, and am competent to make this declaration. This declaration is based on my personal knowledge. In preparing this declaration, I have also relied on my personal experience, my review of company documents and information, and, if called as a witness, I could and would testify competently thereto.

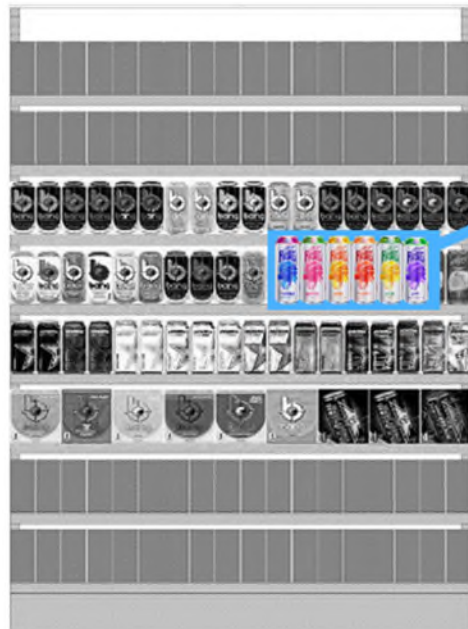
2. I have been employed at PepsiCo for over 18 years. Before taking on my current position as Vice President of Commercial Planning for Energy, I was Sr. Director of Sales for Recreation and Travel. My responsibilities as Vice President of Commercial Planning for Energy include working with the marketing integration team across multiple energy brands and bring products into the stores through our customers and sales organizations. Through my work at PepsiCo, I have become knowledgeable about the promotion and sales of MTN DEW RISE ENERGY drinks.

3. MTN DEW RISE ENERGY is a fruit-flavored energy drink, and is marketed and sold as an energy drink. Consumers, retailers, and beverage industry professionals generally view the energy drink category as its own category, separate and distinct from the coffee and tea category. As such, non-coffee-flavored energy drinks, like MTN DEW RISE ENERGY and offerings of MONSTER ENERGY, ROCKSTAR, BANG, and REDBULL, are typically sold in separate sections from the ready-to-drink coffee drinks, and often not even in the same aisle. Even if a retailer places MTN DEW RISE ENERGY drinks and coffee-based products in a common

store aisle, the two product types are usually grouped in distinct shelf areas. I had not heard of Rise Brewing Company or its products before Rise Brewing Company filed its lawsuit against PepsiCo. I have not encountered their products in connection with my business responsibilities for PepsiCo, before or since becoming aware of their products due to this lawsuit.

4. Retailers' marketing of MTN DEW RISE ENERGY is consistent with PepsiCo's marketing strategies and instructions. PepsiCo's Commercial Planning Team manages and communicates to its customers the executional framework—the look and feel of where products are placed in retail space—required for MTN DEW RISE ENERGY drinks and other PepsiCo products. Although some larger retailers have greater control, PepsiCo negotiates with them for suitable shelf space that aligns with its marketing strategies.

5. In particular, PepsiCo's framework conveys to customers that the MTN DEW RISE ENERGY product is a fruit-flavored energy drink and should be merchandized in the energy drink section or aisle of the retailer's space. PepsiCo's communications to its sales and merchandising teams detail that PepsiCo's MTN DEW RISE ENERGY beverages are to be marketed on shelves with other energy beverages as shown below (BANG and ROCKSTAR are energy drinks distributed by PepsiCo as well), or in certain instances with other MTN DEW product lines, e.g., cold coolers.



6. Large retail store customers often have their own planograms like the above images (which are detailed drawings of shelves or cooler space with special attention to where products should be placed) because manufacturers negotiate for dedicated shelf space in the stores and the retailer ultimately controls where products are displayed in aisles, coolers, and shelves. Many of PepsiCo's large customers, including Walmart, Kroger, HEB, Safeway, Albertsons, and Publix have provided planograms to PepsiCo. Generally in these planograms, MTN DEW RISE ENERGY drinks are merchandized in the energy section of the retailer's space with other energy drinks, and not the coffee section, or in stand-alone end caps provided by PepsiCo, often bearing the MTN DEW RISE ENERGY brand. Sometimes MTN DEW RISE ENERGY is merchandized along with other carbonated soft drinks like MTN DEW, which also are predominantly separate from coffee drinks.

7. For retailers with smaller available space, such as gas stations and convenience stores, MTN DEW RISE ENERGY is typically placed adjacent to other energy drinks, segmented away from coffee drinks or in cold vaults with other PepsiCo products. Occasionally, both small and large retailers also place MTN DEW RISE ENERGY drinks in incremental displays with other MTN DEW branded beverages or other PepsiCo beverages.

8. Photographs of examples of MTN DEW RISE ENERGY on sale on retail shelves, in incremental displays, and in end caps appear at the end of this declaration.

9. MTN DEW RISE ENERGY has been a remarkably successful product. PepsiCo has launched MTN DEW RISE ENERGY drinks in approximately over 170,000 retailers across the United States, including convenience stores, gas stations, drug stores, and other retail platforms. PepsiCo has also launched the product to a number of franchise partners, which make up about 15% of the distribution of MTN DEW RISE ENERGY beverages nationwide.

10. Year-to-date, as of the date of this declaration, PepsiCo has sold over 2.9 million cases (which is 34.8 million cans) of MTN DEW RISE ENERGY to external customers, which represents substantial retail sales. MTN DEW RISE ENERGY is available to consumers on a nationwide scale, as approximately 62% of the measured retail universe, as captured by IRI data analytics, sells MTN DEW RISE ENERGY products in their space.

11. A large portion of purchasers of MTN DEW RISE ENERGY drinks are prior consumers of other MTN DEW products.

12. Since introducing MTN DEW RISE ENERGY to the marketplace, PepsiCo is unaware of a single distributor, retailer or consumer being confused between PepsiCo or its MTN DEW RISE ENERGY drinks and RBC or its coffee products. No retail customer has expressed or reported any instance of confusion about the source of MTN DEW RISE ENERGY or RBC's products, and PepsiCo is unaware of any instance of actual consumer confusion about the source of MTN DEW RISE ENERGY or RBC's products.

13. Putting a stop to PepsiCo's sale of MTN DEW RISE ENERGY drinks will cause financial and reputational harm to PepsiCo, including the costs associated with the over 6.8 million cans PepsiCo currently has on hand, which may not be saleable depending on the duration of any injunction and product shelf life guarantees, and irreparable reputational damage to relationships with PepsiCo's distribution network and customers.


14. From my experience, I know that reputational goodwill with key customers is critical and can have significant, companywide repercussions. If the sale of MTN DEW RISE ENERGY is halted, customers may be reluctant to partner with us on programming including limited-time offers, promotional events, or other in-store events for MTN DEW and even other

PepsiCo brands. Reputational trust is critical in this industry, and PepsiCo cannot afford to lose it with our retail partners.

15. PepsiCo would gain no benefit and has not benefitted from RBC's claimed marks or products. PepsiCo's MTN DEW brand is an incredibly valuable asset with incalculable goodwill, and PepsiCo has no need or intention to emulate or trade off the goodwill of any other brand in the beverage space or any other industry. Nor does PepsiCo have any intent or desire for the public to associate RBC's products with PepsiCo or MTN DEW or any other PepsiCo brand.

Pursuant to 28 U.S.C. § 1746, I, Kathryn Walker, declare under penalty of perjury that the foregoing is true and correct.

Executed in Rockville Centre, New York, on this 10<sup>th</sup> day of August, 2021.

  
Kathryn Walker



